



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 162

[Docket No. USCG-2011-1086]

RIN 1625-AB84

Inland Waterways Navigation Regulations

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would amend the inland waterways navigation regulations. Specifically, this rule proposes to redefine the geographical points which currently demarcate an area of the Detroit River in which certain vessels are restricted to speeds not greater than 12 statute miles per hour (10.4 knots).

DATES: Comments and related materials must reach the Coast Guard on or before [INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2011-1086 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

- (1) Online: <http://www.regulations.gov>.

(2) Mail: Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, D.C. 20590-0001.

(3) Hand delivery: Room W12-140 on the Ground Floor of the West Building, 1200 New Jersey Avenue SE, Washington, D.C. 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

(4) Fax: 202-493-2251.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail LT Adrian Palomeque, Prevention Department, Sector Detroit, Coast Guard; telephone (313)568-9508, e-mail Adrian.F.Palomeque@uscg.mil. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to

<http://www.regulations.gov> and will include any personal

information you have provided. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's "Privacy Act" paragraph below.

Submitting comments

If you submit a comment, please include the docket number for this rulemaking (USCG-2011-1086), indicate the specific section of this document to which each comment applies, and give the reason for each comment. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under ADDRESSES; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Viewing comments and documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov> at any time. Enter the docket number for this rulemaking (USCG-2011-1086) in the "Keyword" box, and click "Search." You may also visit either the Docket Management Facility in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, D.C. 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays; or the U.S. Coast Guard Sector Detroit, 110 Mount Elliott Avenue, Detroit, MI 48207, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's Privacy Act Statement in the Federal Register published on April 11, 2000 (65 FR 19477), or you may visit <http://DocketsInfo.dot.gov>.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under ADDRESSES explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the Federal Register.

Basis and Purpose

Recently, representatives from the Lake Carriers' Association, the Lakes Pilots Association, the International Shipmasters Association, and the Canadian Shipowners Association made a request of the Coast Guard regarding 33 CFR Part 162. Particularly, these groups requested that the Coast Guard amend, via federal rulemaking, 33 CFR 162.138(a)(1)(ii), which requires vessels on the Detroit River north of the Detroit River Light to operate at no more than 12 statute miles per hour. In response to the request, the Coast Guard's Ninth District Commander, in consultation with the Captain of the Port, Sector Detroit, Windsor Port Authority, Transport Canada, and the Canadian Coast Guard, assessed the necessity and utility of the aforementioned regulatory provision and determined that the southern point of the

restricted speed area in 33 CFR 162.138(a)(1)(ii) should be relocated to a point approximately 2.5 statute miles to the north at the D33 stationary light.

The speed restriction in 33 CFR 162.138(a)(1)(ii) requires vessels on the Detroit River north of the Detroit River Light from operating at no more than 12 statute miles per hour. This restriction serves two purposes. First, it is intended to prevent collisions and groundings. (See 33 CFR 162.130(a)). Second, it is intended to limit wake damage to vessels and shore structures (see 60 FR 35701-01). Because the Detroit River Light is several miles into Lake Erie and because the channel between the Detroit River Light and the D33 stationary light is roughly twelve-hundred yards wide, the Ninth District Commander has determined that limiting speed south of the D33 stationary light is not necessary to prevent wake damage or to prevent collisions and groundings. Thus, 33 CFR 162.138(a)(1)(ii), as currently written, serves as an unnecessary restriction on vessel operations. Moreover, this unnecessary restriction is exacerbated by the fact that upbound vessels must decelerate well in advance of the Detroit River Light in order to attain the maximum speed at the light itself.

Discussion of Proposed Rule

Because the Ninth District Commander has determined

that 33 CFR 162.138, as currently written, unnecessarily restricts vessel operations, this rule proposes to reduce the size of the restricted speed area currently delineated in 33 CFR 162.138 (a)(1)(ii). In particular, this rule proposes to relocate the southern point of the restricted speed area from the Detroit River Light to the D33 stationary light.

Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude that this proposed rule is not a significant regulatory action because we anticipate that it will not adversely affect the economy, will not interfere

with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. Rather, relocating the southern point of the restricted speed area delineated in 33 CFR 162.138 (a)(1)(ii) will lessen restrictions on the public and on private industry.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule will affect the following entities, some of which might be small entities: the owners and operators of vessels intending to transit between the Detroit River Light and the D33 stationary.

The proposed relocation of the southern point of the restricted speed area delineated in 33 CFR 162.138

(a)(1)(ii) will not have a significant economic impact on a substantial number of small entities for the following reason: this proposed amendment will lessen navigation restrictions on the public and private industry.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking process. If this proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LT Adrian Palomeque, Prevention Department, Sector Detroit, Coast Guard; telephone (313)568-9508, e-mail Adrian.F.palomeque@uscg.mil. The Coast Guard will not retaliate against small entities that question or object to this proposed rule or any policy or

action of the Coast Guard.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on

the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable

law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.1D and Department of Homeland Security Management Directive 023-01, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves amendments to navigation regulations and thus, is categorically excluded under paragraph 34(i) of the Commandant Instruction. A preliminary Categorical Exclusion Determination (CED) and a preliminary environmental analysis checklist are available in the docket where indicated under ADDRESSES.

We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects 33 CFR Part 162

Navigation (water), Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR Part 162 as follows:

PART 162 - INLAND WATERWAYS NAVIGATION REGULATIONS

1. The authority citation for part 162 continues to read as follows:

Authority: 33 U.S.C. 1231; Department of Homeland Security Delegation No. 0170.1.

§ 162.138 [Amended]

2. In § 162.138(a)(1)(ii), remove the words "Detroit River Light" and in their place add the words "D33 stationary light in the Detroit River entrance".

Dated: April 18, 2012

M. N. PARKS
Rear Admiral, U.S. Coast Guard

Commander, Ninth Coast Guard District

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